

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: TESTOSTERONE REPLACEMENT
THERAPY PRODUCTS LIABILITY
LITIGATION**

**Case No. 1:14-cv-1748
MDL No. 2545
Hon. Matthew F. Kennelly**

THIS DOCUMENT RELATES TO:

All Cases Listed in Exhibit A

**ACTAVIS, INC.; ACTAVIS PHARMA, INC.;
ACTAVIS LABORATORIES UT, INC.; WATSON LABORATORIES, INC.;
ANDA, INC.; AUXILIUM PHARMACEUTICALS, INC.; PFIZER INC.;
AND PHARMACIA & UPJOHN COMPANY LLC'S
MOTION TO DISMISS AND FOR JUDGMENT ON THE PLEADINGS
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(6) AND 12(c)**

Pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, defendants Actavis, Inc.; Actavis Pharma, Inc.; Actavis Laboratories UT, Inc.; Watson Laboratories, Inc., a Nevada corporation; and Anda, Inc. (“the Actavis Defendants”); Auxilium Pharmaceuticals, Inc. (“Auxilium”); and Pfizer Inc. and Pharmacia & Upjohn Company LLC (“the Pfizer Defendants”) (collectively, “ANDA Defendants”) respectfully move for an order dismissing plaintiffs’ Master Long-Form Complaint—and any and all individual complaints that contain allegations and causes of actions with regard to defendants’ testosterone replacement therapies approved pursuant to an abbreviated new drug application (“ANDA”)—on the ground that plaintiffs’ claims involving ANDA medications are preempted under the doctrine of impossibility preemption, as reflected in the U.S. Supreme Court’s decisions in *PLIVA, Inc. v. Mensing*, 564 U.S. ---, 131 S. Ct. 2567, *reh’g denied*, 132 S. Ct. 55 (2011), and *Mutual Pharm. Co. v. Bartlett*, 570 U.S. ---, 133 S. Ct. 2466 (2013). A complete list of the individual complaints pending as of

the date of this motion is attached hereto as Exhibit A.¹ This motion is supported by the contemporaneously filed memorandum of law and request for judicial notice.

Date: May 15, 2015

Respectfully submitted,

/s/ Joseph P. Thomas

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¹ Exhibit A contains a list of all known complaints filed against the ANDA Defendants that: (1) involve plaintiffs who allege they took an ANDA medication, and (2) are pending in this MDL as of Thursday, May 14, 2015. There may be some additional complaints of which the ANDA Defendants are not aware. Further, some of the complaints listed in Exhibit A have not been served; those unserved cases are identified on Exhibit A with an asterisk next to the case number. The ANDA Defendants do not intend to waive any defense(s) they may have relating to service of process by filing this motion, but they have identified the unserved cases for the Court's convenience, as the same arguments would apply to those cases.

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2015, the foregoing document was filed via the Court's CM/ECF system, which will automatically serve and send email notification of such filing to all registered attorneys of record.

/s/ Joseph P. Thomas